



Mwangome & 5 others v Rea Vipingo Plantations Ltd & 3 others (Environment & Land Case E030 of 2023) [2024] KEELC 4518 (KLR) (11 March 2024) (Ruling)

Neutral citation: [2024] KEELC 4518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E030 OF 2023
LL NAIKUNI, J
MARCH 11, 2024**

BETWEEN

**WYCLIFFE TEMBO MWANGOME 1ST PLAINTIFF
NGUMBAO KENGA IHA 2ND PLAINTIFF
JOSEPH KARISA FONDO 3RD PLAINTIFF
ESTHER KACHE MWAYELE 4TH PLAINTIFF
GEOFFERY KAMAU NGOIYA 5TH PLAINTIFF
BAMBANI KILIO CBO 6TH PLAINTIFF**

AND

**REA VIPINGO PLANTATIONS LTD 1ST DEFENDANT
VIPINGO DEVELOPMENT PLC FORMELY VIPINGO DEVELOPMENT
LTD 2ND DEFENDANT
CENTUM DEVELOPMENT PLC 3RD DEFENDANT
MOMBASA CEMENT LIMITED 4TH DEFENDANT**

RULING

I. Introduction

1. This ruling is in respect to two (2) Notices of Motion applications dated 6th April, 2023 and 20th April, 2023 by the Plaintiffs/Applicant and 5th Intended Interested Party respectively. The Plaintiffs/Applicants herein, Wycliffe Tembo Mwangome, Ngumbao Kenga Iha, Joseph Karisa Fondo, Esther Kache Mwayele, Geoffrey Kamau Ngiya and Bambani Kilio C.B.O moved this Honourable Court for the hearing and determination of their Notice of Motion application dated 6th April, 2023.



2. The Plaintiffs/Applicants herein also, moved this Honorable Court for the hearing and determination of their Notice of Motion application dated 20th April, 2023. Additionally, the Plaintiffs/Applicants filed the Notice of Motion dated 22nd June, 2023 by the Commission for Human Rights and Justice, the 5th Intended Interested Party herein was brought under the provision Order 1, Rule 3 of the Civil Procedure Rules, 2010 and Section 3A, 6, and 7 of the Civil Procedure Act, Cap. 21. However, the Honourable Court will reserve its decision with regard to the application dated 22nd June, 2023 awaiting further deliberation with the parties and direction from the outcome of the two applications dated 6th and 20th April, 2023 being dealt with simultaneously from this Ruling herein.
3. Upon service of the applications to the Defendants, and they tendered their response to the Notice of Motion application dated 20th April, 2023 via a Notice of Preliminary objection dated 8th May, 2023. For ease of disposal of the matter, the Honourable Court has decided to handle the multiplicity of applications herein over the same subject matter simultaneously though separately on the raised averments and eventually deliver an omnibus Ruling herein.

II. The Notice of Motion application dated 6th April, 2023

4. The application was brought against the Defendants herein, Bayshore Limited. It was brought under the provision of Article 159 (2) of the Constitution of Kenya, 2010, Section 10 of the High Court (Organization and Administration) Act, Sections 1A, 1B, 3A and 3B of the Civil Procedure Act, Cap. 21 Laws of Kenya. The Plaintiffs sought for the following orders:-
 - a. Spent.
 - b. This Honourable Court be pleased to issue orders for the demolition of the perimeter wall that has been illegally erected and planted sisal by the Respondent/Defendants on the Plaintiffs' parcel of land.
 - c. This Honourable Court be pleased to issue temporary injunctive orders restraining the Respondents/Defendants by themselves, their servants, agents, and/or any other person claiming under them from conducting a survey, subdividing, fencing, evicting, planting sisal, constructing perimeter alienating, and/any other illegal activities and dispossessing the Plaintiffs'/ Applicants' from their legal acquired parcel of land reference Number 663/IV/MN,CR Number 79015, Original Number s 120/1,117/1,118,119/2 located at South of Takaungu-Kilifi along possession including fencing of the plots standing in the property pending the hearing and determination of this application and that Kilifi county commissioner, and the Kilifi County Commissioner, and the Kilifi South-Sub County Police Commander, O.C.S Kijipwa Police Station to enforce the orders herein.
 - d. This Honourable Court be pleased to issue temporary injunctive orders restraining the Respondents/Defendants by themselves, their servants, agents, and/or any other person claiming under them from conducting a survey, subdividing, fencing, evicting, planting sisal, constructing perimeter wall alienating, and/any other illegal activities and dispossessing the plaintiffs/applicants from their legal acquired parcel of land reference Number 663/IV/MN,CR Number 79015,Original Number S 120/1,117/1,118,119/2 located at South of Takaungu-Kilifi along Malindi Road or in any other way interfering with the Plaintiffs'/ Applicants' quiet possession including fencing of the plots standing in the property pending the hearing of the main suit and that Kilifi County Commissioner, and the Kilifi South - Sub County Police Commander, O.C.S Kijipwa Police Station to enforce the Orders herein.
 - e. Costs of this Application be provided for.



5. The application by the Plaintiffs herein was premised on the grounds, testimonial facts and averments made out under the 14th Paragraphed Supporting Affidavit with five (5) annexures marked as “JKF 1 to 5”, of Esther Kache Mwayele, a Plaintiff herein and dated 6th April, 2023. She averred that:
- a. The Plaintiffs/Applicants are legal owners parcel of land reference Number 663/IV/MN,CR Number 79015,Original Number S 120/1,117/1,118,119/2 located at South of Takaungu-Kilifi along Malindi Road. (Hereinafter referred to as “the Suit parcels”)
 - b. The Defendant/Respondents were threatening to demolish and evict applicants’ houses and furthermore had started planting sisals and constructing perimeter wall. Annexed in the affidavit and marked as “JKF - 2 & 3” were a true copy of the photographs of the homesteads.
 - c. They had tried all means to approach the Defendants/ Respondents with the violation of their rights and/or in trespass and/or encroachment into their property at Mombasa and who were not well known to them had informed them that they had Certificate of titles to the suit property.
 - d. They were the legal owners to the suit land having acquired title deed to them on 13th December 2022 from the Land Registry, Mombasa and having duly signed by the Land Registrar Mombasa. Annexed in the affidavit and marked as “JKF – 4” was a true copy of the title issued on 13th December 2022.
 - e. Having been legally issued with the said title deed, they conducted search at the same registry and the outcome was that the Plaintiffs/Applicants were the right owners of parcel of land. Annexed in the affidavit and marked as “JKF – 5” was a true copy of the Certificate of Postal official search dated 13th December 2022.
 - f. The Defendants/Respondents intended to take advantage of their vulnerabilities to disfranchise them on their parcel of land yet they had no color of right neither any interest in the parcel of land.
 - g. It was for the interest of justice that this Honorable court do issue the orders herein sought to protect the suit property pending the hearing and/or determination of this application and/or main suit and/or their interest to own property.
 - h. The suit property was at the risk of being developed and/or being alienated with the view of hood winking them to think that the Defendants/Respondents had obtained absolute interest in the property and that as a result of the developments, they had lost their interests in the same.
 - i. Unless the orders herein sought were granted they stood a chance to suffer an irreparable loss that could never be remedied with money and as such the ends of justice shall never be met.
 - j. They had “a prima facie case’ with high chances of success and that the suit property need to be protected and be preserved as he ventilated into the suit to prevent them from being disfranchised of their property.
 - k. It was in the interest of justice that the orders sought herein be granted

III. The Notice of Motion application dated 20th April, 2023

6. The application was brought under a Certificate of urgency and the dint of the provisions of Order 40 Rule 1 of the Civil Procedure Rules, Section 28 of the [Land Registration Act](#), 2012, Article 40, 64 and 159(2)(d) of [the Constitution](#) of Kenya 2010. The Plaintiffs sought the following orders:-



- a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Spent
 - e. That pending the hearing and the determination of this Petition, the Honourable Court be pleased to issue an Order staying all proceedings and the implementation or enforcement of all Orders issued in Kilifi Senior Principal Magistrates' Court ELC No. E004 of 2023.
 - f. That pending the hearing and determination of this Petition, the Honourable Court be pleased to restrain the Respondents whether by themselves, by their servants, by their agents or by any other person acting under their authority, from entering upon, invading, accessing, destroying crops, erecting structures or in any other way interfering with the Suit properties.
 - g. That the Honourable Court be pleased to grant/issue any other orders/directions as may be just and expedient with a view to dispensing justice.
 - h. That costs of this application be provided for.
7. The application by the Plaintiffs herein was premised on the grounds, testimonial facts and averments made out under the 6 Paragraphed Supporting Affidavit of Kenneth Gitonga Mbae sworn and dated 20th April, 2023, who averred that:
- a. The Applicant is the bona fide owner of the following parcels of land (the Suit Properties):-
 - i. C.R.7314/1-MN/117/1 of Section IV Mainland North-Land Survey Plan 229529 and MN/120/1 of Section IV Mainland North Land Survey Plan -229533-232.843Hectares.
 - ii. C.R. 9732/1-Subdivision 119/2 of Section IV Mainland North-Deed Plan no.229532measuring 75.99 hectares
 - iii. C.R. 9823/1 Subdivision 118 of Section IV Mainland North - Deed Plan no. 15254-measuring 16.17 Hectares.
 - b. On or about the 7th day of April 2023, (Good Friday) the Suit Properties were suddenly subjected to intense threats and efforts of invasion by members of the public, more so the Respondents herein on the basis of a duplicate Title Number ED Land Reference MN/IV/663 -C.R. 79015 which was mysteriously issued on 13th December, 2022 in favour of the Respondents herein.
 - c. It was quite clear that two titles could not legally subsist over the same parcel of land and in the circumstances the Orders sought herein, to preserve the status of the Suit Properties that was currently in active use, occupation and possession of the Petitioner were critical, pending a full and proper disclosure and explanation by the Respondents of how they came to acquire a duplicated Title last year.
 - d. It was equally important that the Petitioner be protected from the lawless and violent forcible attempts by the Respondents to enter upon the Suit Properties in defiance of all known legal principles governing the acquisition of property and in contravention of all known Constitutional tenets and norms.



- e. The Respondents had filed a suit at the Kilifi Senior *Principal Magistrates' Court vide ELC No.E004 of 2023* against, inter alia, the Applicant, and obtained ex-parte Orders which was detrimental to the Applicant's right of ownership over and peaceful occupation of the Suit Properties.
- f. The subject value of the suit properties exceeded the pecuniary jurisdiction of the Kilifi lower court (the land has a total acreage of 803 acres with current valuation of more than a sum of Kenya Shillings Two Million (Kshs. 2,000,000/=) per acre. Thus, the Magistrate had failed to prioritize determination of the Petitioner's Preliminary objection on jurisdiction and continued to issue adverse ex parte Orders against the Petitioner and the result thereof had been to embolden further aggressive invasion attempts on the Applicant's Suit Properties by squatters and trespassers including the Respondents herein.
- g. The Suit Properties with other lands, had been used as a collateral by the Standard Bank of South Africa Limited to secure a financial facility to the Applicant for the United States Dollar Nine Million (USD \$ 9,000,000.00) and a sum of Kenya Shillings Three Billion Eight Twenty Three Million Two Hundred Thousand (Kshs. 3,823,200,000.00/=).
- h. The Kilifi Senior Principal Magistrates' Court, with its pecuniary jurisdiction limit could not have jurisdiction over Suit Properties with such high value.
- i. In the circumstances, it was imperative and prudent that the proceedings and Orders in Kilifi Senior Principal Magistrates' Court ELC No. E004 of 2023 were stayed to avert an embarrassment to this Court which was properly seized of this dispute.
- j. It was in the best interest of justice that the present application be allowed.

IV. The Response to the Notice of Motion application dated 20th April, 2023

8. The Respondents through a Notice of Preliminary objection dated 8th May, 2023 opposed the Notice of Motion application dated 20th April, 2023 on the following points of law:-
 - a. The Petition and Notice of Motion Application both dated 20th April, 2023 failed the test of precision as set out in the famous case of "Anarita Karimi Njeru case" and reiterated by the Court of Appeal in "*Mumo Matemu – Versus -Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR" as a constitutional Petition but never pleaded how any single article of *the Constitution* had been threatened or violated.
 - b. The Petition offended and/or went to counter to the hackneyed principle of "Constitutional Avoidance" as the issues raised by the Petitioners, if at all, could and ought to be raised and determined through alternative legal or Civil processes and through the interpretation of ordinary statutes including the *Civil Procedure Act*, Cap. 21 the Land Statutes and the *Evidence Act*, Cap. 80 among others on this court was thus devoid of jurisdiction to entertain and/or determine the Petition.
 - c. Both the Petition and application raised no bona fide or plausible Constitutional issue but instead were a red herring, diversionary and a total abuse of the due process of court.
 - d. The Petition was for revoking and/or canceling the Respondent's Certificate of Title and/or for seeking equitable remedies in the nature of temporary and/or permanent injunction both raising serious triable issues but cloaked under the guise of a Constitutional Petition in a bid to circumvent the Respondents' right to fair hearing.



- e. The Petition herein was a non-starter, incompetent, incurably defective, untenable, statute barred, improperly before court and a mockery of justice and both the Petition and application ought to be struck out with costs.

V. Submissions

9. On 25th July, 2023 while all the parties were present in Court, they were directed to have the Notices of Motion applications dated 6th April, 2024 and 20th April, 2024 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 18th January, 2024 a ruling date was reserved on 11th March, 2023 by Court accordingly.

A. The Written Submissions by the Plaintiffs/Applicants.

10. The Learned Counsel for the Plaintiffs/Applicants being the Law firm of Messrs. Edwin Yose & Company Advocates filed their written Submissions dated 5th February, 2024. Mr. Yose Advocate commenced his submissions by stating that the Plaintiffs/Applicants are legal owners parcel of land reference Number 663/IV/MN, CR Number 79015, ORIGINAL Number S 120/1,117/1,118,119/2 located at South of Takaungu - Kilifi along Malindi Road. They had quiet possession until the Respondents/Defendants threatened to demolish their houses and evict them from their homestead with the intention of dispossessing them out of their legally acquired parcel of land. The Respondents then illegally constructed a perimeter wall and planted sisals on the land belonging to the Plaintiffs/Applicants.
11. According to the Learned Counsel, as result of these, the Plaintiffs/Applicants sought legal redress through filing of in court the application dated 6th April 2023. It sought for the orders already stated out herein above. The Learned Counsel informed Court that the main issue for determination was one on whether the afore - stated application had met the threshold for granting temporary injunction. He averred that the Plaintiffs/Applicants case had met the threshold set for granting Temporary injunction Orders.
12. The Plaintiff/Applicant's was a "prima facie case" with probability of success. The suit property belonged to the Plaintiffs/Applicants who were duly registered as the owners at the Lands Registry. Their ancestors owned and they had lived on the suit property from time immemorial and had records to prove their claim to the suit property. Further, he contended that on the other hand Defendants/ Respondents had brought about another title to try and prove that the parcel of land belonged to them. That was what they alleged. The documents in the Defendants/Respondent's possession never had the a backing at the Lands Registry. Despite of this, they had encroached on the suit property tramping over the numerous efforts of resistance from the Plaintiffs/Applicants and other members of the community. It was illegal and unjust for a party to benefit from a parcel of land that never belonged to them.
13. The Counsel asserted that there was in existence of two documents showing different owners. To him, this brought about the exception to the indefeasibility of a title deed as provided for under the provision of Section 26 (1) (b) of the *Land Registration Act*, No. 3 of 2012. The said provision of the law states that a title could be questioned on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title had been acquired illegally, unprocedurally or through a corrupt scheme. To the Learned Counsel, the Certificate of Title Deed by the 1st Respondent never reflected them as being the true ownership as it existed at the land registry. From an official search conducted at the Lands registry showed the legal owners of the suit property to be the Plaintiffs/Applicants.



14. Thus, the Learned Counsel argued that there could never be two titles for the same piece of land. That occurrence would only happen if there were a mistake during registration. To ascertain which one of the two titles produced were the correct one, this matter had to proceed on for full trial after the application before Court had been determined. In the meantime, it was necessary that the orders sought were granted to allow the Plaintiffs/Applicants enjoy their legally acquired parcel of land. They had the highest probability for success. To buttress on this point, he relied on the decision of:- "[*James Njambi – Versus - James Kamau Waweru*](#) [2022] eKLR where the Court held:-

“In the instant case the parties have found themselves with two different titles for the same parcel of land. It is trite that a parcel of land cannot have two titles. The law prohibits such a scenario and the law has given powers to the Land Registrar to so cancel titles under Section 79 of the LRA. The Land Registrar has power to rectify title if there are errors omissions not materially affecting the interest of the proprietor; correction of dimensions, correction of names address or such other particulars.

15. Additionally, the Learned Counsel averred that the Plaintiffs/Applicants stood to suffer irreparable losses if the orders sought were not granted. By virtue of ownership they had a right to peaceful enjoyment of their property as provided for under the provision of Article 40 of [*the Constitution*](#) of Kenya, 2010. He stressed that the injustice they would suffer if the orders were not granted could not be compensated. Loosing ancestral land where parties had lived all their lives was of dire consequences and an injustice and the same should not be allowed. The Counsel cited the case of:- "[*Pius Kipchirchir Kogo – Versus - Frank Kimeli Tenai*](#) (2018) eKLR, where the Court expressed itself as follows:-

“irreparable injury means that the injury must be one that cannot be adequately In compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

16. The Learned Counsel informed Court that as at the year 2023, from the official search conducted at the Lands registry indicated that the Plaintiffs/Applicants were the legal and registered owners of the suit property. In the given circumstances, the Counsel then wondered where then the Defendants/ Respondents had gotten the Certificate of Title Deed indicating them as being the owners to the suit property and which they alleged to be a true copy.

According to the Learned Counsel, the 2nd Respondent claimed to have bought the parcels of land known as MN/IV/120/1, MN/IV/117/1(CR7314) from the 1st Respondent in the year 2015. Further, the 2nd Respondent alleged that MN/IV/119/2 and MN/IV/118/2 were also purchased on the same date via the same agreement. He alleged that the last two had a Change of User done and approved. The Learned Counsel submitted that this could not be further from the truth because by the year 2015, the Plaintiffs/Applicants were already in occupation of the suit property after a lease that had been granted to a European national lapsed. He averred that the Plaintiffs/Applicants having been in occupation of the land were finally able to come together and follow due process to acquire title to the suit property only for the Defendants/Respondents to encroach and build a perimeter wall recently. He stated that the perimeter wall was erected sometimes in late years 2022 to 2023. They took the advantage of the community's financial vulnerability and lack of knowledge of the law. By the time the Plaintiffs/Applicants were able to bring this suit, the Defendants/Respondent had managed to erect the said perimeter wall on the suit property.



17. The Learned Counsel asserted that the balance of probability tilted in favor of the Plaintiffs/Applicants. He emphasized that the current records at the Land Registry corroborated the Plaintiffs/Applicant's claim of ownership to the suit property. They had in their possession the title deed to the property and would be the most prejudiced in the event their application was not allowed.
18. In conclusion, the Learned Counsel submitted that this application was merited. It had met the requisite threshold for granting an injunction. Thus, he urged the Honorable Court allowed it as prayed with costs to the Plaintiffs/Applicant.

B. The Written Submissions by the 2nd Defendant/Respondent

19. The Learned Counsel for the 2nd Defendant/Respondents being the Law firm of Messrs. Mukite Musangi & Company Advocates filed their written submissions dated 12th February, 2024. Mr. Musangi Advocate averred that the submission was in opposition to the Notice of Motion application dated 6th April, 2023 by the Plaintiffs/Applicants and in support of the Notice of Motion application dated 20th April, 2023. The Learned Counsel informed court that the dispute before Court revolved around the lawful ownership of "the Suit Properties" referenced C.R 9823 L.R NO MN/IV/118 (Now L.R NO. 1835/IV/MN -C.R. 75006);C.R 8732 L.R NO.MN/IV/119/2 (Now L.R No. 1834/IV/MN - C.R. 75005) and C.R 8732 L.R NO.MN/IV/119/2 (Now L.R No. 1834/IV/MN - C.R. 75005). He asserted that the Court would eventually be called to determine who between the protagonists possessed valid titles and which title was a product of fraud and therefore invalid. For now, the Plaintiffs/Applicants and the 2nd Defendant had each moved this Court for injunctive orders against the other. The Plaintiffs/Applicants filed their application dated 6th April, 2023 in which they sought the afore stated orders herein above.
20. On the other hand, the 2nd Defendant through its application dated 20th April, 2023 (filed under the now consolidated suit reference Malindi ELC Constitutional Petition No.E014 of 2023) whereby they sought for the orders set out above. The Learned Counsel rehashed that the Honourable Court directed that both these applications be canvassed together by way of written submissions. Thus, they had rendered their submissions on both applications while seeking for diametrically opposed Orders of interim relief. By submitting in support of their application dated 20th April, 2023, had contemporaneously urged against the Plaintiffs/Applicants' application. In that regard, the issue for determination was whether the application dated 20th April 2023 had met the threshold for grant of orders of temporary injunction. Consequently, the Court would determine if the Plaintiffs' application had met the same threshold and in tandem, what relief/s commend themselves to this Court. PARAGRAPH 21.

The Learned Counsel opined that he would not be re - inventing the wheel in so far as the legal principles applicable herein were concerned. He held that the conditions set for consideration in granting an injunction were now well settled in the case of: "Giella – Versus - Cassman Brown & Company Limited (1973) E A 358, where the court expressed itself on the conditions that a party must satisfy. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction would not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it would decide an application on the balance of convenience.

22. Hence, while applying these legal principles to the instant case, the Learned Counsel posited that the 2nd Defendant/Respondent had demonstrated "a prima facie case" with a probability of success. According to him, based on the material presented before Court, the 2nd Defendant had demonstrated "a prima facie case" with high chances of success. In this regard, he referred this Court to the Court of



Appeal's definition of a prima facie case in the celebrated case of:- "MRAO Limited – Versus - First American Bank of Kenya Limited & 2 Others [2003] KLR 125 at page 137 .

From the filed Statement of Defence and Counter - Claim dated 14th June, 2023 as well as the Petition dated 20th April, 2023, the 2nd Defendant/Respondent sought for a declaration that its titles over the suit properties referenced C.R 9823 L.R NO MN/IV/118 (Now L.R NO. 1835/IV/MN - C.R. 75006); C.R 8732 L.R NO.MN/IV/119/2 (Now L.R NO. 1834/IV/MN - C.R. 75005) and C.R 8732 L.R NO.MN/IV/119/2(Now L.R NO.1834/IV/MN - C.R. 75005) are the only valid titles, and prayed for the cancelation of the fraudulent title freshly minted by the 1st to 5th Plaintiffs/ Respondents. He asserted that the 2nd Defendant/Respondent had in its Supporting Affidavit sworn by on Mr. Kenneth Gitonga Mbae as seen from pages 18-23 of the Petition) illustrated how each of the aforementioned Titles were acquired. First and foremost, the titles were annexed to the said affidavit and marked as "KGM - 2A, 2B and 2C" for suit parcels no. C.R 9823 L.R NO MN/IV/118 (NOW L.R NO. 1835/IV/MN-C.R. 75006); C.R 8732 L.R NO.MN/IV/119/2 (Now L.R NO. 1834/IV/MN-C.R. 75005) and C.R 8732 L.R NO.MN/IV/119/2(Now L.R NO. 1834/IV/MN-C.R. 75005) respectively. Additionally, Mr. Mbae narrated how these titles were obtained at paragraph 10 of the supporting affidavit. He recounted as follows:

"The history of the Suit Properties, as borne out in the Land Registry's official records, is evident in the full chains of Title:-

The Petitioner (VDP) purchased L.R. No's MN/IV/120/1 and MN/IV/117/1 (C.R. 7314) from Rea Vipingo Plantations Limited by a Sale Agreement dated 27th March 2015. By a Transfer dated 27th May 2016 the property was duly registered in the name of the Vipingo Development Ltd (now the Vipingo Development PLC.) (VDP) The relevant Deed Plans are Number ed 229529 and 229533.

The Petitioner (VDP) purchased L.R. No. MN/IV/119/2 from Rea Vipingo Plantations Limited by the same Sale Agreement dated 27th March 2015. This land was consequently also duly transferred to VDP. The Petitioner subsequently applied for a change of user and a new lease was issued upon approval of the same as L.R. No. MN /IV/1834 (CR 75005) measuring 75.99 hectares (187.78 acres approximately). The leasehold term runs for 99 years from the 1st day of August 2018.

The Petitioner (VDP) purchased L.R. No. MN/IV/118/2 (as LR No. IV/MN/159) from Rea Vipingo Plantations Limited by the same Sale Agreement dated 27th March 2015. This land was consequently duly transferred to VDP. The Petitioner subsequently applied for a Change of User and a new Lease was issued upon approval of the same as LR MN /IV/1835 (CR 75006) Deed plan 439734 Comprising approximately 16.17 hectares. (39acres approximately) The leasehold term runs for 99 years from the 1st day of August 2018.

He stated that the above testimony was reproduced in order to juxtapose it with the Plaintiffs/ Respondents' claim. The contention by the Counsel was that a cursory look at all of the Plaintiffs'/ Respondents' pleadings, affidavits and statements would reveal that they never indicated how they obtained their title. All they only alleged being the owners of the suit property having ben issued the title thereto on 13th December 2022. It was quite suspicious that they never illustrated the root of their title, yet they were praying that the 2nd Defendant's pre-existing Titles be canceled.



25. He submitted that it was trite that when a person's title was called into question, the said proprietor had to show the root of his ownership. To buttress on this point, he cited the of "Hebert L Martin & 2 Others – Versus - Margaret J Kamar & 5 Others {2016 where the Court held:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

26. The upshot of the above authority was that where one's title was under challenge, then they had to demonstrate the root of their title. In the present case, the Plaintiffs/Respondents had merely flashed a freshly minted title without any history of how they acquired it. Whereas the 2nd Defendant/Respondent had demonstrated the root of its titles. As such the 2nd Defendant/Respondent had established a prima facie case, with very high chances of success. On the contrary, the Plaintiffs/Respondents never disclosed any foundation of their Title. The Learned Counsel asserted that the Court would also observe that the lawful custodian of title records in Kenya, the Ministry of Lands vide the Land Registrar had unequivocally affirmed the validity of the 2nd Defendant's Titles. It was trite law that a duplicate Title could not be validly issued for the same parcel of Land as long as valid Title existed for the said land. To the Counsel, the title by the Plaintiffs/Respondents had no legal standing. On this point, he once more referred Court to the Supporting Affidavit by Mr. Mbae, particularly to exhibit Number 9 (see paragraph 12) being a letter dated 26th January, 2023 authored by the Land Registrar, Mombasa. In the said communication, the Land Registrar discussed the root of the titles held by the 2nd Defendant and confirmed that they were indeed valid. In the process, the Land Registrar discredited the fraudulent title held by the Plaintiffs/Applicants. There had been no challenge to this official communication by the said custodian of titles. Therefore, he stressed that the 2nd Defendant's title was beyond challenge. PARAGRAPH 27.

Additionally, the Learned Counsel submitted that the 2nd Defendant would suffer irreparable injury unless the interlocutory injunction is granted. He held that 'Irreparable loss' was described in the case of Paul Gitonga Wanjau – Versus - Gathuthi Tea Factory Co. Limited & 2 Others, Nyeri HCC No.28 of 2015, as simply injury or harm which would not adequately be compensated by damages and would be continuous. To the Counsel, there was doubt that the 2nd Defendant/Respondent was in occupation of the suit properties through the agricultural investments thereon and the farming activities currently being undertaken. This fact was evident from the Plaintiffs/Applicants' own supporting affidavit sworn by Esther Kache Mwaye at paragraph 3 where she admitted that the 2nd Defendant/Respondent was currently in occupation of the suit property and was undertaking sisal farming. He asserted that from the supporting affidavit by Mr. Mbae on behalf of the 2nd Defendant at paragraph 25 further confirmed the 2nd Defendant's farming activities and extensive developments on the land. Indeed, that the 2nd Defendant had charged the suit properties to various financial institutions to secure loan facilities for the existing and future development of the land. As such, with so much at stake, it was indisputable that the 2nd Defendant would suffer irreparable injury in the face of the



palpably illegal forced invasion attempts onto the land orchestrated by the Plaintiffs/Applicants while attempting to disrupt the status quo.

29. To him, the threat of invasion had already been actualized by the Plaintiffs/Applicants. At paragraph 8 of Mr. Mbae's affidavit, he narrated that from 7th April to 10th April 2023, the Plaintiffs/Applicants incited members of the public to invade the 2nd Defendant/Respondent's land with a view to forcibly taking possession of the same. Annexed thereto and marked as "KGM – 6" was a copy of a news article by one of the local dailies – "The Standard" dated 8th April, 2023 on the invasion of the Suit Properties. Therefore, it was clear that the Plaintiffs/Applicants were hellbent on causing irreparable injury to the 2nd Defendant/Respondent's interests over the land by firstly destroying its investments on the land and evicting it from the land. It would be a great reprieve to the 2nd Defendant/Respondent If this Court were to issue temporary injunctive orders against the Plaintiffs/Respondents, their servants and agents pending the hearing and determination of the suits filed in relation to the suit properties. The status quo Orders already in place in this suit had afforded the same relief to the 2nd Defendant/Respondent up to this point with no prejudice at all to the Plaintiffs/Applicants.

With regard to the balance of convenience, the Learned Counsel submitted that it tilted in favour of the 2nd Defendant/Respondent maintaining its occupation and active use of the land/status quo.

30. On the third limb wherein if the Court was in doubt, then it would determine the matter on the balance of convenience, he submitted that the balance of convenience tilted in favour of maintaining the status quo. To support this point, the Counsel referred Court to the case of:- "[*Virginia Edith Wambui – Versus - Joash Ochieng Ougo*](#)", Civil Appeal No.3 of 1987 (1987) eKLR, the Court of Appeal held that:-

"The general principle which has been applied by this court is that where there are serious conflicts off acts, the trial court should maintain the status quo until the dispute has been decided on a trial."

In this instant matter, the status quo ought to be maintained. According to the Counsel, by the status quo herein, it meant that the situation to be as it existed before and after the attempted wrongful acts by the Plaintiffs/Applicants. The wrongful acts herein were the interference with the suit properties by the Plaintiffs through the procurement of an illegal duplicate title to the suit property and the Plaintiffs/Applicants unlawful actions of attempting to forcibly invade the suit properties.

31. In conclusion, the Learned Counsel urged the Court to allow the 2nd Defendant's application dated 20th April, 2023 with costs, particularly by injunction the Plaintiffs/Applicants whether by themselves, by their servants, by their agents or by any other person acting under their authority, from entering upon, invading, accessing, destroying crops, erecting structures or in any other way interfering with the Suit properties. Thus, the Court should dismiss the Plaintiffs/Applicants' application dated 6th April, 2023 with costs.

VI. Analysis & Determination.

32. I have carefully read and considered the pleadings herein by the Plaintiffs/Applicants and the Defendants, the relevant provisions of [*the Constitution*](#) of Kenya, 2010 and statutes. There was a response made by the Respondents inn ELC PET E014 of 2023 where they filed a preliminary objection dated 8th May, 2023 as against the Petition and Notice of Motion application dated 20th April, 2023 which in my opinion has been overtaken by events being that the matter was transferred and consolidated with this matter.



33. In order to arrive at an informed, Just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-
- a. Whether the Notice of Motion application dated 6th April, 2023 is merited?
 - b. Whether the Notice of Motion application dated 20th April, 2023 has merit?
 - c. Who will bear the Costs of Notice of Motion applications dated 6th April, 2023 and 20th April, 2023.

Issue No. a). Whether the Notice of Motion application dated 6th April, 2023 is merited?

32. Under this sub-title, the Honourable Court has deciphered that the singular substrata is over land ownership and whether to grant interim injunctive orders to the parties herein each bearing two conflicting Certificate of title deeds over the same subject suit land. With regard to the Plaintiffs/Applicants, this Honourable Court will examine two issues for determination:

- i. Whether the Plaintiffs/Applicants have made out a case for the grant of interlocutory injunctions?
- ii. Whether the Honourable Court can grant orders of demolition at this stage?

32. The first issue for determination is whether the Plaintiffs/Applicants have met the criteria for the grant of an order of temporary injunction pending the hearing and determination of this suit. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of “Giella – Versus - Cassman Brown (1973) EA 358 (Supra)”. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of “Nguruman Limited – Versus - Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR” where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

32. Consequently, the Plaintiff ought to, first, establish a prima facie case. In “Mrao Limited (Supra) in which the Court of Appeal gave a determination on a prima facie case. The court stated that:

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

32. The Plaintiffs/Applicants in this matter have averred that they are the legal owners of parcel of land reference Number 663/IV/MN,CR Number 79015, original Number s 120/1,117/1,118,119/2 located at South of Takaungu - Kilifi along Malindi Road.In support of their application, the Plaintiffs have attached copies of documents of title to the suit properties.



33. Secondly, the Plaintiffs/Applicants have to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of “Pius Kipchirchir Kogo (Supra) provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

32. The Plaintiffs/Applicants have deposed that the Defendants/Respondents are threatening to demolish and evict applicant’s houses and furthermore have started planting sisals and constructing perimeter wall. (Annexed in the affidavit and marked as JKF-2 & 3” were a true copy of the photographs of the homesteads). They had tried all means to approach the Defendants/Respondents with the violation of their rights and/or in trespass and/or encroachment into their property based at Mombasa and who are not well known to them had informed them that they have titles to the suit property. They were the legal acquired title deed owners of the suit property issued to us on 13th December 2022 from Mombasa land registry having duly signed by Mombasa land registrar.(Annexed in the affidavit and marked as “JKF – 4” is a true copy of the title issued on 13th December 2022). The Respondents and in particulars intends to take advantage of their vulnerabilities to disfranchise them on their parcel of land yet they have no color of right neither do they have any interest in the parcel of land. The Plaintiffs argued that the suit property is at the risk of being developed and/or being alienated with the view of hood winking us to think that the Respondents have obtained absolute interest in the property and that as a result of the developments, they had lost their interests in the same.

33. In my view, therefore, the threat to their ownership of land is sufficient demonstration of irreparable loss being occasioned to the Plaintiffs.

Thirdly, the Plaintiffs/Applicants have to demonstrate that the balance of convenience tilts in their favour. In the case of “Pius Kipchirchir Kogo (Supra) which defined the concept of balance of convenience as:

‘The meaning of balance of convenience will favour of the Plaintiff’ is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

32. In the case of “Paul Gitonga Wanjau -Versus - Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR”, the court dealing with the issue of balance of convenience expressed itself thus:-

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was



granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

32. The Plaintiffs/ Applicants contended that the balance of convenience tilts in their favour because they are the legal owners of the suit properties. The decision of “*Amir Suleiman – Versus - Amboseli Resort Limited* [2004] eKLR” where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

32. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the registration of title in the name of the Plaintiffs/Applicants. At this stage, I have also not had the opportunity to interrogate the annexures to the Defendants/ Respondents’ replying affidavit.

33. I am compelled to cited the case of:- “*Robert Mugo Wa Karanja – Versus - Ecobank (Kenya) Limited & Another* [2019] eKLR” where the court in deciding on an injunction application stated;

“circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

32. I am convinced that if orders of temporary injunction are not granted in this suit, the properties in dispute might be in danger of being dealt in the manner set out in the application and apprehended by the Plaintiffs/Applicants.

33. In view of the foregoing, I find that the Plaintiffs/ Applicants have met the criteria for grant of orders of temporary injunction.

34. The second issue is on the demolition of the perimeter wall which is a permanent injunction. The Plaintiffs/ Applicants have asked the Honourable Court to issue orders for demolition of the perimeter wall that has been illegally erected and planted sisal by the Respondent/Defendants on the Plaintiffs’ parcel of land.

35. It is clear that the Motion is seeking the twin prayers of a temporary injunction and a permanent injunction. Concerning the permanent injunction sought under order (iii), it is not in dispute that the suit is yet to be heard on merit and it is apparent that this is not clear cut case even without going into its merits. For the foregoing reasons, I find that it would be premature for me to grant a permanent



injunction at this stage. I am persuaded the holding of this court in the case of “*Kenya Power & Lighting Co. Limited – Versus - Sheriff Molana Habib* [2018] eKLR” where it was held inter alia as follows:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”

32. From my analysis of the respective positions presented above, I have not come across any compelling factors that would warrant the granting of a permanent/ mandatory order of injunction at this stage. In my humble view, the present case does not fall within the category of clear-cut cases that can form a basis to grant a mandatory injunction.
33. To this end I find the Notice of Motion application dated 6th April, 2023 is meritorious with regards to prayer (c) and (d) on the temporary injunctive orders.

Issue No. b). Whether the Notice of Motion application dated 20th April, 2023 has merit?

32. Under this sub-title, the Plaintiff this Honourable Court will examine two issues for determination:
 - i. Whether the Applicants have made out a case for the stay of all proceedings and the implementation or enforcement of all Orders issued in Kilifi Senior Principal Magistrates’ Court ELC No. E004 of 2023?
 - ii. Whether the Applicants have made out a case for the grant of temporary injunctions restraining the Respondents whether by themselves, by their servants, by their agents or by any other person acting under their authority, from entering upon, invading, accessing, destroying crops, erecting structures or in any other way interfering with the Suit properties.
32. On the issue of staying the proceedings and the implementation or enforcement of all Orders issued in Kilifi Senior Principal Magistrates’ Court ELC No. E004 of 2023, Section 6 of the *Civil Procedure Act*, provides for stay of suits. It is worded thus:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

Explanation. — The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.



32. The above section is a bar to parallel prosecution of cases in two fora of equal jurisdiction. *Halsbury's Law of England, 4th Edition. Vol. 37* pages 330 and 332, sheds light on stay of proceedings and states thus:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...”

32. The Plaintiffs/Applicants have averred that they are the bona fide owners of the suit properties. On or about the 7th day of April 2023, (Good Friday) the Suit Properties were suddenly subjected to intense threats and efforts of invasion by members of the public, more so the Respondents herein on the basis of a duplicate Title Number ED LAND REFERENCE MN/IV/663 -C.R. 79015 which was mysteriously issued on 13th December, 2022 in favour of the Respondents herein. The Respondents have filed a suit at the Kilifi Senior *Principal Magistrates' Court vide ELC No.E004 of 2023* against, inter alia, the Applicant, and obtained ex-parte Orders which are detrimental to the Applicant's right of ownership over and peaceful occupation of the Suit Properties.

33. While it is true that the environment and Land Court exercises Jurisdiction over the subordinate courts, this jurisdiction is hinged on the subject matter jurisdiction of the court. Section 13 of the *Environment and Land Court Act* states that this court has original and appellate jurisdiction to hear and determine all disputes (Emphasis is mine) in accordance with Article 162(2) (b) of *the Constitution* of Kenya 2010 and the provisions of this Act or any other law applicable in Kenya relating to environment and Land. This Honourable Court has the jurisdiction to exercise oversight over subordinate Courts on land matters. Notably, the main purpose of staying proceedings is to avoid the mischief of different courts of competent jurisdiction hearing a matter between same parties over the same or similar subject matter due to the likelihood of the different courts coming up with different decisions which could cause embarrassment to them.

34. The jurisdiction of this court which is a court of equal status to that of the High Court, to adjudicate over a civil matter. Therefore the stay herein is granted as sought being that the matter in the lower Court is civil in nature in the Environment and land division hence it be stayed forthwith.

35. On the issue of interlocutory injunctions, it has already been determined in Issue (a) above and the same granted for the preservation of the suit property.

36. In the forgoing, I find the Notice of Motion application dated 20th April, 2023 is meritorious with regards to prayer (c) and (d) on the temporary injunctive orders. For purposes of preserving the suit land, this Court has already pronounced itself on the parties maintaining the status quo meaning the situation to remain as it was prior to the filing of the suit herein by the Plaintiffs/Applicants. I do not expect anyone to be prejudiced whatsoever.

Issue No. c). Who will bear the Costs of Notice of Motion application dated 6th April, 2023 and Notice of Motion application dated 20th April, 2023.

32. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of



Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “*Jasbir Rai Singh – Versus - Tarchalan Singh*” eKLR (2014) and “*Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited*, eKLR (2014)”.

33. In this case, taking that this matter is still proceeding on, this Honourable Court for found both applications will be in the cause.

VII. Conclusion & Disposition

32. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience.
33. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, this court arrives at the following decision and makes below order:-
- a. That the Notice of Motion application dated 6th April, 2023 with regards to prayer (c) an (d) be and is hereby found to have merit hence it is hereby allowed.
 - b. That the Notice of Motion application dated 20th April, 2023 also be and is hereby found to have merit and hence it is allowed in its entirety meaning the Status Quo to be maintained.
 - c. That this Honourable Court be and is hereby pleased to issue temporary injunctive orders restraining the Defendants/ Respondents by themselves, their servants, agents, and/or any other person claiming under them from conducting a survey, subdividing, fencing, evicting, planting sisal, constructing perimeter alienating, and/any other illegal activities and dispossessing the Plaintiffs/ Applicants from their legal acquired parcel of land reference Number 663/IV/MN,CR Number 79015, ORIGINAL Number S 120/1,117/1,118,119/2 located at South of Takaungu-Kilifi along possession including fencing of the plots standing in the property pending the hearing and determination of this application and that Kilifi county commissioner, and the Kilifi County Commissioner, and the Kilifi South-Sub County Police Commander, O.C.S Kijipwa Police Station to enforce the orders herein.
 - d. That this Honourable Court be and is hereby pleased to issue temporary injunctive orders restraining the Respondents/ Defendants by themselves, their servants, agents, and/or any other person claiming under them from conducting a survey, subdividing, fencing, evicting, planting sisal, constructing perimeter wall alienating, and/any other illegal activities and dispossessing the plaintiffs/applicants from their legal acquired parcel of land reference Number 663/IV/MN,CR Number 79015,Original Number S 120/1,117/1,118,119 /2 located at South of Takaungu-Kilifi along Malindi Road or in any other way interfering with the Plaintiffs’/Applicants’ quiet possession including fencing of the plots standing in the property pending the hearing of the main suit and that Kilifi County Commissioner, and the Kilifi South-Sub County Police Commander, O.C.S Kijipwa Police Station to enforce the Orders herein.
 - e. That an order be and is hereby issued staying all proceedings and the implementation or enforcement of all Orders issued in Kilifi Senior Principal Magistrates’ Court ELC No. E004 of 2023 pending the hearing and determination of this suit.
 - f. That for expediency sake, there be a hearing on 18TH July, 2024. For the purposes of conducting Pre – Trial Conference under the provision of Order 11 of the Civil Procedure Rules. 2010, there be a Mention on 4TH June, 2024. Notice to issue.



- g. That the costs of the Notice of Motion application dated 6th and 20th April, 2023 shall be in the cause.

It is so ordered accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 11TH DAY OF MARCH 2024.

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HON. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT MOMBASA

Ruling delivered in the presence of:

- a. M/s. Yumna, the Court Assistant.
- b. No appearance for the Plaintiffs/Applicants.
- c. Mr. Kahora Advocate for the 1st Defendants/Respondents.
- d. Mr. Makora Advocate holding brief for Mr. Musangi Advocate for the 2nd 3rd Defendants/Respondents.
- e. Mr. Mwiti Advocate holding brief for Mr. Onyonyi Advocate for the 4th Defendant/Respondent.
- f. M/s. Odhiambo Advocate holding brief for Mr. O. Masake Advocate for the 5th Interested Party.

